

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 05-10489-MEL

GLENN S. BATES,
Plaintiff

v.

TOWN OF HARWICH, HARWICH POLICE
DEPARTMENT, CHRISTOPHER KENDER,
and BARRY MITCHELL
Defendants

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**DEFENDANTS', TOWN OF HARWICH AND HARWICH POLICE DEPARTMENT,
MOTION TO EXTEND THE TRACKING ORDER TO MONDAY, DECEMBER 11, 2006
TO FILE A MOTION FOR SUMMARY JUDGMENT LATE**

Now come the Defendants, Town of Harwich and Harwich Police Department, and hereby move this Honorable Court to extend the Tracking Order to Monday, December 11, 2006 to allow the Defendants to file its Rule 56 Motion for Summary Judgment.

In support of this Motion, the Defendants, Town of Harwich and Harwich Police Department, state that the original Tracking Order for the above-captioned case was amended setting a November 15, 2006 deadline for dispositive motions, however, this deadline was not properly diaried resulting in the defendants' counsel's failure to meet the deadline for filing its Motion for Summary Judgment. It was not until Co-Defendants' counsel filed Notice pursuant to Local Rule 7.1(A)(2) on November 15, 2006 to Plaintiff's counsel that Defendants' counsel realized the deadline for filing dispositive motions was, in fact, November 15, 2006. Immediately upon discovering the deadline for filing dispositive motions was November 15, 2006, counsel for the Town of Harwich and Harwich Police Department informed the Plaintiff's

attorney that it would also be filing a Local Rule 7.1(A)(2) Notice and requested permission to file a Motion for Summary Judgment late. In response to Defendants' counsel's request that the Plaintiff assent to this Motion to Extend the Tracking Order Plaintiff's counsel, Attorney Gregory Donoghue stated that he was unable to reach his client to obtain consent for the late filing. Therefore, the Defendants, Town of Harwich and Harwich Police Department, now move this Honorable Court to extend the Tracking Order to Monday, December 11, 2006.

The Defendants state that no party to this action will be prejudiced by this late filing because there is no trial date scheduled and there is an outstanding Motion for Summary Judgment which has been filed by the Defendants, Christopher Kender and Barry Mitchell, but has not yet been scheduled for oral argument. Furthermore, the Plaintiff is yet to file an opposition to the Defendants' Motion.

Since the Defendants' Motion for Summary Judgment has not yet been scheduled there would be no delay caused by the Defendants, Town of Harwich and Harwich Police Department, filing its Motion for Summary Judgment late. Judicial economy suggests that hearing both Defendants' Motions together might resolve this entire matter as the Defendants, Town of Harwich and Harwich Police Department, believes there are no issues of material fact in dispute and that the Defendants are entitled to judgment as a matter of law.

Finally, the Defendants, Town of Harwich and Harwich Police Department, state that the late filing of the Motion for Summary Judgment would not be unduly burdensome on the Court or on Plaintiff's counsel for the above stated reason and respectfully request an extension to December 11, 2006 for the filing of its Motion for Summary Judgment. In addition, the Defendants, Town of Harwich and Harwich Police Department, would certainly agree to any

extension the Plaintiff's counsel would need for additional time to file an opposition to the Defendants' Motion for Summary Judgment.

Respectfully submitted,

/s/ Charles D. Mulcahy

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Dated: November 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 22, 2006.

/s/

Charles D. Mulcahy